experience. In theory, discrimination against the affiliate's competitors would require circumventing the Commission's established equal access and non-discrimination requirements. Price cap and tariff regulation of carrier access services will prevent price discrimination, while comparative degradation of a competitor's access service to produce a service quality reduction large enough for customers to notice would be unlikely to escape the notice of the interexchange carriers or the state and federal regulators.

32. In practice, competition by non-vertically integrated firms with LEC "bottleneck monopolies" has already succeeded in parts of other telecommunications markets that are equally or more susceptible to anticompetitive tactics than the interexchange market: including cellular, voice messaging services (VMS), corridor and intraLATA long distance services, distribution of customer premises equipment. Consider cellular, VMS and intraLATA long distance services.

33. LECs have participated in cellular telephony since 1983. The service is organized as a (largely) unregulated duopoly in the United States with entry limited by the availability of only two 25 MHz channels in each geographic market. At its inception, one channel was allocated to wireline carriers (generally a BOC or GTE) and the other to non-wireline providers, though no such restriction is imposed on the licenses once they are awarded. What is significant here is that the wireline licensees (the LECs) have not come to dominate the market, as would have happened if they had been able to subsidize these services from their local telephone services. Despite a late start, non-wireline suppliers have nearly equal market shares;[18] the largest cellular company in the U.S. is AT&T/McCaw, a non-wireline supplier and seven of the ten cellular companies with the highest penetration rates are not BOCs.[19] Perhaps the best evidence, though, that participation by incumbent LECs in the cellular business does not foreclose competition comes from the wireline carriers themselves. Though presumably most knowledgeable about the real risks of anticompetitive conduct directed at them by the incumbent wireline cellular carriers, the number of territories in which telephone company cellular affiliates compete with one another has grown

[18] Estimated from Paul Kagan Associates, Inc. Wireless Market Stats, No. 72, August 31, 1995, pp. 6, 13.

[19] *Wireless Telecom Investor*, March 14, 1994, No. 73, p. 10.

rapidly from about 5 in 1986 to more than 30 in 1995.[20] And a company as knowledgeable and sophisticated as AT&T sunk billions into this market through its purchase of McCaw. This is powerful evidence that concern that LECs might be able to discriminate in favor of their cellular affiliate in their home territory has not been a deterrent to entering into competition with them.

34. Many LECs have long been allowed to provide information services, and the BOCs also have been allowed to enter those markets in recent years—all without evidence that competition has been undermined. Since the BOCs and GTE began offering VMS, consumer welfare has increased in at least two ways. First, the monthly charge has dropped from $30 in 1990 to $5-$15 in 1995.[21] Second, the LECs began offering VMS to an untapped market segment—residential and small business customers. In five years, the BOCs' participation in this market increased from zero to over six million subscriptions, yet competitors have thrived and the BOCs and GTE together account for just over 15% of the total VMS revenues nationally.

35. Finally, evidence concerning the viability of interLATA competition also comes from the intraLATA long distance markets. Nearly all states permit intraLATA toll competition, and in none of them have the LECs been required to divest themselves of their toll businesses or even to create separate subsidiaries. Moreover, if competition in the presence of bottleneck facilities gave rise to uncontrollable discrimination, the intraLATA long distance markets would surely show it. When interexchange carriers entered these markets in the past, they (i) started with a small initial market share, (ii) had few facilities within the LATA, so that long distance competition required substantial use of LEC access facilities, (iii) did not have complete dialing parity in any LATA, and (iv) had to compete against inexpensive local calling within the LATA and overcome the imperfectly perceived difference between local and long distance calling. Even under these circumstances, LECs are losing significant amounts of market share, particularly for large business customers that combine interLATA and intraLATA traffic on the same dedicated

[20] The 1995 number reflects direct competition among the former BOCs except for Pacific Telesis, which spun off its cellular company (now known as AirTouch Cellular).

[21] J.A. Hausman and T.J. Tardiff, "Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services," April 6, 1995.

facilities. In comparison, BOC affiliates entering the interLATA business would have only regional facilities and customer base, no dialing advantage, no initial market share, and no ability to serve customers at both ends of the call. The success of competition for intraLATA long distance is strong evidence that the theoretical problems of discriminatory treatment of BOC affiliates and their competitors are adequately addressed by existing regulatory safeguards.[22]

36. In sum, there is no need to rely on either a priori reasoning or descriptions of regulatory rules to conclude that there is no significant danger of LEC anticompetitive discrimination in these markets. We have now accumulated many years of experience of the LECs operating in associated telecommunications markets in competition with other companies; and there is no evidence that they have succeeded in preventing or suppressing competition as an effective force in any of these markets.

C. Merger Issues

37. The NPRM asks what effect a merger or joint venture between two BOCs would have on the classification of an interLATA affiliate as dominant or non-dominant (¶ 148) and on the sufficiency of current safeguards during the pendency of the merger (¶ 40). From an economic perspective, a merger or joint venture that increased the size and area of two BOCs would have no effect on the classification of their interLATA affiliate(s) for two reasons. First, mergers which increase the territory of a local exchange provider do not increase the market power of that provider in its local exchange markets. Local exchange markets are geographically narrow, so that mergers of LECs are unlikely to reduce actual, current competition in any market. Similarly, such mergers have no apparent effect on potential competition because the most likely local exchange competitors for incumbent LECs are firms that currently have facilities and/or customers in the territory in question. Those firms are generally CAPs, IXCs and cable companies, not other LECs. Second, the market in question is the downstream long distance

[22] Additional interLATA long distance competition has taken place successfully since divestiture along the New Jersey - New York and New Jersey - Philadelphia corridors. Bell Atlantic competes with interexchange carriers on these routes under the Commission's rules without incident. Its serves only a small fraction of demand on these routes but markets heavily to attract 10XXX calling.

market, not the local exchange market. Judged by ordinary economic standards, a merger of two potential entrants into long distance should have no anticompetitive effect in that market, as both firms, separately and combined, are and will likely be the foreseeable future, a small player (or players) in the interLATA long distance market.

38. From an economic perspective, nothing is different during the period after the announcement of an intention to merge or form a joint venture and its consummation. Discrimination in favor of a future partner's long distance affiliate is proscribed and controlled by the same safeguards that prevent discrimination in favor of the BOC's own long distance affiliate. Equal access was devised to ensure equality across <u>all</u> long distance competitors but was particularly sensitive to differential advantages that one interexchange carrier (AT&T) might have relative to other carriers. Safeguards in the current system thus work particularly well to ensure a level playing field among competing unaffiliated users of BOC carrier access services which would include the service of a future partner's interLATA long distance affiliate.

39. A merger or joint venture would not change the fundamental in-region long distance calculus: local exchange competition, federal and state regulation of exchange access services and other regulations still constrain the ability of a BOC to exercise market power in long distance markets irrespective of the size of the local service territory of BOC participants. A merger or enlarged service territory would not alter the perspective of the end-user who is simply seeking the best long distance service for the lowest price for the calls he or she originates. Thus, no economic problems connected with mergers or joint ventures require changes in regulations or in the way the FCC should consider market power of the LEC long distance affiliates.

William E. Taylor

Subscribed and sworn to before me this
14th day of August, 1996

Notary Public

My Commission expires July 7, 2000.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 1996 a copy of the foregoing "Comments of Bell Atlantic" was served on the parties on the attached list.

Tracey DeVaux

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